



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: MZP Inc.  
File: B-224860; B-224861  
Date: December 19, 1986

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### DIGEST

1. A contracting agency may determine that the individual sureties on a bid bond are unacceptable and, consequently, find the bidder nonresponsive where the individual sureties fail to disclose outstanding bid bond obligations, regardless of the actual risk of liability on them.
2. In determining the acceptability of an individual surety, contracting officials are not required to determine each and every outstanding obligation of the surety. Rather, the surety must disclose all other bond obligations on the Affidavit of Individual Surety, Standard Form 28.

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### DECISION

MZP, Inc. protests the allegedly improper rejection of its bids under two solicitations issued by the United States Army Corps of Engineers, Honolulu District. The protester contends primarily that its individual sureties were not required to list their outstanding bid bonds, and that in any event their assets exceed their outstanding obligations.

We deny the protests.

The invitations for bids at issue here are No. DACA83-86-B-0189, issued July 30, 1986 with an August 29 opening date, and No. DACA83-86-B-0194, issued August 6 with a September 5 opening date. The former is for the painting of exterior trims, beams, and sidings at Kaneohe Marine Corps Air Station, Oahu, Hawaii; the latter covers repairs to the gym at Tripler Army Medical Center, Oahu.

Bidders were required under both IFBs to submit bid bonds equal to 20 percent of their bid prices. Because the protester was bonded by two individual sureties, rather than a corporate surety, a completed Affidavit of Individual

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Surety (Standard Form 28) was required for each. Item 10 of the Affidavit requires the individual sureties to disclose "all other bonds" on which they are obligated at the time they execute the bid bonds.

The record indicates that the three lowest bidders under IFB No. -0189 submitted what the Corps determined were deficient bid bonds, and, on September 23, the contracting officer awarded a contract to the fourth-low bidder, Color Dynamics, Inc.

In the case of MZP, the second-low bidder, a preaward survey had revealed that MZP's individual sureties were each also obligated on bid bonds for three other procurements.<sup>1/</sup> In completing Item 10 of the Affidavit of Individual Surety, however, each had inserted "N/A", which the agency interpreted to mean that the sureties had no outstanding obligations. The contracting officer states that he had no way of knowing whether MZP's sureties might also be obligated on other, nondisclosed bonds, leading to his determination that the sureties were unacceptable and that MZP was not a responsible bidder.

As for IFB No. -0194, MZP submitted the apparent low bid; however, the contracting officer proposes not to make an award to the firm because it employed the same individual sureties, who again failed to disclose their obligations on other bid bonds.

In its protest, MZP contends that the sureties were only required to disclose outstanding performance and payment bond obligations. MZP argues that it submits approximately 120 to 130 bids a year to various government agencies and that it would be impossible to keep track of the changing status of the bid bonds required for these bids. The firm alleges that decisions of our Office permit it to submit information concerning the outstanding obligation of its sureties at any time up until award. In addition, MZP argues that it is a violation of equal protection to require individual, but not corporate, sureties to provide a list of all such obligations with the bid bonds that they guarantee.

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<sup>1/</sup> As of bid opening for IFB No. -0189, they were obligated on bonds for two earlier procurements conducted by the same activity; the third obligation for each arose on bid opening date for IFB No. -0194, also at issue here.

The purpose of a bid guarantee is to protect the government's financial interest in the event that a bidder fails to execute required contract documents and deliver required performance and payment bonds. To achieve this purpose, we have held, it is reasonable for the government to require that both individual sureties on a bid bond have a net worth at least equal to their total potential bond obligations, regardless of the actual financial risk involved. See Clear Thru Maintenance, Inc., 61 Comp. Gen. 456 (1982), 82-1 CPD ¶ 581. A surety must disclose all outstanding obligations, including bid bonds as well as payment and performance bonds, so that the contracting officer may make an informed determination concerning the surety's financial soundness. See Dan's Janitorial Services, Inc., 61 Comp. Gen. 592 (1982) 82-2 CPD ¶ 217. On a bid bond, a surety's obligation runs from the time the bid is submitted by the principal and continues for the duration of the bid acceptance period. The contracting officer may consider a surety's failure to disclose fully all outstanding obligations as a factor in a responsibility determination. See Norse Construction, Inc., B-216978, Feb. 25, 1985, 85-1 CPD ¶ 232.

Further, the Federal Acquisition Regulation (FAR), 48 C.F.R. § 28.202-2 (1985), states that the net worth of each individual surety must be at least equal to the penal amount of any type of bond, and, in determining the acceptability of the individual sureties, the contracting officer is required to consider the number and amount of other bonds on which each proposed individual surety is bound.

MPZ, citing Utility Construction Co., Inc., B-225473, Nov. 21, 1986, 86-2 CPD ¶ \_\_\_\_\_, correctly states that because the acceptability of its sureties concerns responsibility, rather than bid responsiveness, information as to their obligations may be furnished any time up to award. This does not, however, impose a duty on contracting officials to attempt to determine each and every outstanding obligation of each individual surety as part of a responsibility determination. If, as the protester argues, it is difficult for a bidder to keep track of the status of procurements on which its sureties may be obligated, it would be equally or more difficult for contracting officials to do so, and we have never imposed such a duty on them. In this case, the contracting officer was aware of other obligations of MPZ's sureties only as they related to procurements by the same activity; he had no way of determining what other government contracts MPZ might have been competing for at the same time, using the same sureties.

As for when the information must be furnished, here the record indicates that the Corps conducted a preaward survey of MPZ before making award to the fourth-low bidder under IFB No. -0189. Moreover, on or about September 25, MPZ discussed the problem of undisclosed bid bond obligations with contracting officials in connection with IFB No. -0194. These officials agreed to meet the firm's president and requested that he provide them with a list of the outstanding obligations of MPZ's sureties. Apparently, however, no meeting occurred, and MPZ's first attempt to provide the information was in a letter to our Office dated December 1. We believe that MPZ was afforded a reasonable opportunity after bid opening to provide the required information, and we note that the December 1 letter is merely a summary by MPZ, not the sworn statement of the sureties that should have accompanied the bid bonds.

We conclude that the Army had a reasonable basis to reject MZP's sureties as unacceptable and therefore acted properly in determining that MZP was nonresponsible with regard to both procurements.

With regard to corporate, as distinguished from individual sureties, as the agency points out, corporate sureties are listed on Treasury Department Circular 570 in accord with the FAR, 48 C.F.R. § 28.202-1, and they presumably have been subjected to scrutiny as to their financial capability before such listing. MPZ does not allege that they are subject to any less stringent requirements than individual sureties, or that their obligations are permitted to exceed their assets. This basis of protest is therefore without merit.

Finally, although MZP states that its sureties have never listed outstanding bid bonds on their Affidavits of Individual Surety in the past, and that MPZ has not been questioned about this by any other government agency, this does not change the fact that disclosure is required. Improprieties in past procurements are not relevant to the acceptability of the sureties in this case. See Wilmington Shipward, Inc., B-214467, June 27, 1984, 84-1 CPD ¶ 677.

The protests are denied.

*for Seymour Efron*  
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General Counsel